

1 Todd O. Maiden (SBN 123524)
Email: tmaiden@reedsmith.com
2 Phillip Babich (SBN 269577)
Email: pbabich@reedsmith.com
3 REED SMITH LLP
101 Second Street
4 Suite 1800
San Francisco, CA 94105-3659
5 Telephone: +1 415 543 8700
Facsimile: +1 415 391 8269

6 Attorneys for Defendant
7 Veridiam, Inc.

8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
10

11 COASTAL ENVIRONMENTAL RIGHTS
12 FOUNDATION, a California nonprofit
corporation,

13 Plaintiff,

14 vs.

15 VERIDIAM, INC., a Delaware corporation,

16 Defendant.
17

Case No. 3:15-cv-02260-WQH-DHB

[PROPOSED] CONSENT JUDGMENT

**(Federal Water Pollution Control Act,
33 U.S.C. § 1251 *et seq.*)**

18 **WHEREAS**, CERF is a nonprofit public benefit corporation founded by surfers dedicated
19 to the protection, preservation and enhancement of the environment, wildlife, natural resources,
20 local marine waters, and other coastal natural resources; and members of CERF use and enjoy the
21 waters into which pollutants from industrial activities are discharged, including the San Diego
22 River and the Pacific Ocean;

23 **WHEREAS**, Veridiam is a Delaware corporation and a build-to-print contract
24 manufacturer serving the medical, nuclear, aerospace, dental and industrial markets;

25 **WHEREAS**, Veridiam operates facilities located at 1717 North Cuyamaca St., El Cajon,
26 California (the "El Cajon Facility" or the "Veridiam Facility"), and at 4665 North Avenue,
27
28

1 Oceanside, California (the "Oceanside Facility"). Collectively, the El Cajon Facility and the
2 Oceanside Facility may be referred to as the "Veridiam Facilities;"

3 **WHEREAS**, the General Permit for Storm Water Discharges Associated with Industrial
4 Activities, State Water Resources Control Board Order No. 97-03-DWQ and National Pollutant
5 Discharge Elimination System Permit ("NPDES") No. CAS000001 ("General Permit") required
6 that specified facilities obtain coverage under the General Permit if those facilities qualify as
7 "industrial" facilities, as defined in the Permit, and if those facilities' storm water discharges could
8 adversely impact the water quality of jurisdictional waters of the United States;

9 **WHEREAS**, on January 27, 2015, CERF sent Veridiam and the County of San Diego a 60-
10 Day Notice Letter indicating CERF's intent to sue Veridiam under Sections 505(a) and (b) of the
11 Clean Water Act, 33 U.S.C. § 1365(a) and (b), for alleged violations of the General Permit ("El
12 Cajon Notice Letter") at the El Cajon Facility, including allegations of: storm water discharges in
13 violation of the General Permit, failure to develop and/or implement best management practices
14 ("BMPs") to achieve compliance with the Clean Water Act's technology standards, failure to
15 develop and implement an adequate Storm Water Pollution Prevention Plan ("SWPPP"), inaccurate
16 or incomplete annual reports, and failure to monitor certain pollutants and storm events;

17 **WHEREAS**, on January 27, 2015, CERF sent Veridiam a separate 60-Day Notice Letter
18 stating CERF's intent to sue Veridiam for alleged violations of the General Permit at the Oceanside
19 Facility ("Oceanside Notice Letter");

20 **WHEREAS**, Veridiam conducts fabricated metal manufacturing at the El Cajon Facility
21 with Standard Industrial Classification ("SIC") Code 3499 which was regulated by the General
22 Permit, and as such, the El Cajon Facility received coverage under the General Permit (or its
23 predecessor versions) since 2006 (Waste Discharger Identification No. 9 37I020299);

24 **WHEREAS**, Veridiam's Oceanside Facility is a conditional industry with SIC Code 3599
25 ("Industrial and Commercial Machinery and Equipment, not elsewhere classified"). Veridiam filed
26 a Notice of Non-Applicability No Exposure Certification (NONA-NEC) with the Regional Water
27 Quality Control Board – San Diego Region ("RWQCB") on or about September 5, 2013;

1 **WHEREAS**, on March 27, 2015, Veridiam responded to CERF's Oceanside Notice Letter
2 regarding the Oceanside Facility. Veridiam informed CERF that the Oceanside Facility was not
3 subject to the General Permit and denied all of CERF's allegations therein;

4 **WHEREAS**, on April 1, 2014, the State Water Resources Control Board adopted Order
5 No. 2014-0057-DWQ, approving and implementing a new General Permit ("2015 General
6 Permit") which superseded the previous General Permit;

7 **WHEREAS**, on April 1, 2015, Veridiam responded to CERF's Notice Letter regarding the
8 El Cajon Facility. Veridiam denied all of CERF's allegations therein;

9 **WHEREAS**, on July 1, 2015, the 2015 General Permit went into effect;

10 **WHEREAS**, by November 1, 2015, Veridiam will file for its Oceanside Facility an
11 updated NEC with the RWQCB, if it has not already done so by that time;

12 **WHEREAS**, on October 8, 2015, CERF filed suit against Veridiam in the U.S. District
13 Court for the Southern District of California (the "Court") (Case No. 3:15-cv-02260-WQH-DHB)
14 for alleged violations of the Clean Water Act, the General Permit, and the 2015 General Permit at
15 the El Cajon Facility;

16 **WHEREAS**, CERF and Veridiam (collectively "Parties") have agreed that it is in the
17 Parties' mutual interest to enter into a Consent Judgment setting forth terms and conditions
18 appropriate to resolving the allegations set forth in CERF's complaint without further proceedings;

19 **WHEREAS**, this Consent Judgment shall be submitted to the United States Department of
20 Justice and the United States Environmental Protection Agency for the statutory review period
21 pursuant to 33 U.S.C. § 1365(c) and 40 C.F.R. § 135.5;

22 **WHEREAS**, all actions taken by Veridiam pursuant to this Consent Judgment shall be
23 made in compliance with all applicable federal, state and local rules and regulations;

24 **NOW THEREFORE IT IS HEREBY STIPULATED BETWEEN THE PARTIES**
25 **AND ORDERED AND DECREED BY THE COURT AS FOLLOWS:**

26 1. The Court has jurisdiction over the subject matter of this action pursuant to section
27 505(a)(1)(A) of the Clean Water Act, 33 U.S.C. § 1365(a)(1)(A).

28 2. Venue is appropriate in the Southern District of California pursuant to Section

1 505(c)(1) of the Clean Water Act, 33 U.S.C. §1365(c)(1), because the Veridiam Facility at which
2 the alleged violations took place is located within this district.

3 3. The complaint states a claim upon which relief may be granted against Veridiam
4 pursuant to Section 505 of the Clean Water Act, 33 U.S.C. § 1365.

5 4. CERF has standing to bring this action.

6 OBJECTIVES

7 5. It is the express purpose of the Parties entering into this Consent Judgment to further
8 the objectives set forth in Section 101 *et seq.* of the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, and
9 to resolve those issues alleged by CERF in its Complaint. In light of these objectives and as set
10 forth fully below, Veridiam agrees, *inter alia*, to comply with the provisions of this Consent
11 Judgment and the requirements of the General Permit, 2015 General Permit, and all applicable
12 provisions of the Clean Water Act at the Veridiam Facility.

13 6. Specifically, Receiving Water Limitation “A” in the 2015 General Permit requires
14 that the Veridiam Facility “not cause or contribute to the exceedance of an applicable water quality
15 standard.” Effluent Limitation “A” of the 2015 General Permit requires that the Veridiam Facility
16 implement Best Management Practices (“BMPs”) that comply with the Best Available Technology
17 (“BAT”) and the Best Conventional Pollutant Control Technology (“BCT”) requirements of the
18 2015 General Permit to reduce or prevent discharges of pollutants in their storm water discharge in
19 a manner that reflects best industry practice considering technological availability and economic
20 practicability and achievability.

21 TERMS AND CONDITIONS

22 7. Veridiam’s Storm Water Consultants. Veridiam has retained outside consultants
23 and/or engineers experienced in storm water compliance issues to update Veridiam’s SWPPP and
24 Monitoring Implementation Plan (“MIP”) and to train Veridiam personnel to conduct storm water
25 sampling at the El Cajon Facility. Veridiam has contracted with a third-party laboratory to analyze
26 and report selected chemical constituents in storm water samples, pursuant to U.S. Environmental
27 Protection Agency approved analytical protocols. By executing this Consent Judgment, CERF
28 agrees that Veridiam and its outside laboratory possess the requisite technical and other

1 qualifications to perform the storm water sampling and analysis. Veridiam shall be under no
2 obligation to continue contracting with this laboratory in the future, however, if it does not meet
3 Veridiam's expectations.

4 8. Immediately following finalization of the SWPPP and MIP, Veridiam will
5 commence implementation of the plans and begin construction of the structural BMPs as described
6 in the design plans, SWPPP and MIP, to the extent such implementation has not already begun.

7 9. No later than November 1, 2015, unless delayed by an impossibility of performance
8 as further described in Paragraph 27, below, or by the meet and confer process, as described in
9 Paragraph 19, below, Veridiam will complete construction and installation of the BMPs as
10 described in the SWPPP and MIP, including:

- 11 a. Ultra-Hydrokleen advanced catch basin in drainage area D3;
- 12 b. Three Modular Wetland Systems to be installed at Building 8 and Building 7; and
- 13 c. Gutters to divert storm water to the Modular Wetland Systems.

14 10. Storm Water Runoff Sampling and Analysis. Beginning with the 2015-2016 wet
15 season (*circa* October 1, 2015), Veridiam shall collect and analyze storm water runoff samples at
16 the Veridiam Facility pursuant to the requirements of the 2015 General Permit. Provisions
17 detailing the required sampling protocols shall be included in the new MIP, and Veridiam shall
18 continue to monitor for the same pollutants as in the prior MIP.

19 11. Site Visit. CERF shall be permitted to visit the Veridiam Facility within the three
20 months following November 1, to verify the implementation of the BMPs required by this Consent
21 Judgment. CERF shall coordinate this visit with Veridiam's Environmental Coordinator, who will
22 provide a tour of the facility's new BMPs.

23 12. Supplemental Environmental Project. Veridiam agrees to pay ten thousand dollars
24 (\$10,000.00) to San Diego Coastkeeper for use in a supplemental environmental project to
25 eliminate or mitigate the impacts of storm water pollution to the San Diego River watersheds
26 receiving discharges from the Veridiam Facility. Veridiam shall make the mitigation payment
27 within thirty (30) days of the Effective Date, defined below in Paragraph 39, payable to San Diego
28 Coastkeeper, and sent via certified mail to San Diego Coastkeeper, Attn. Megan Baehrens, 2825

1 Dewey Road, Suite 200, San Diego, CA 92106. Veridiam shall provide CERF with a copy of such
2 payment.

3 13. Costs and Attorneys' Fees. No later than five (5) business days after the Effective
4 Date, Veridiam shall reimburse CERF in the total amount of fifteen thousand dollars (\$15,000.00)
5 as a compromise of CERF's request for costs and attorneys' fees incurred in pursuing the
6 resolution of Veridiam's alleged violations of the General Permit. Such fees and costs shall be
7 made payable to "Coast Law Group LLP" and delivered Attn: Marco Gonzalez, 1140 S. Coast
8 Highway 101, Encinitas CA, 92024.

9 14. Compliance Monitoring and Oversight. After the Effective Date, Veridiam, if
10 necessary, shall pay to CERF reasonable attorneys' fees, in an amount not to exceed a total of
11 ten thousand dollars (\$10,000), associated with CERF's attorneys' participation in the future
12 compliance monitoring and oversight of this Consent Judgment, provided that CERF makes good
13 faith efforts to minimize legal costs. Any requests for attorneys' fees incurred after execution of
14 the Consent Judgment shall be transmitted to Veridiam pursuant to Paragraph 34 and shall include
15 billing and time entries. Veridiam shall pay CERF within fifteen (15) business days of receiving
16 an invoice. Such fees and costs shall be made payable to "Coast Law Group LLP" and delivered
17 Attn: Marco Gonzalez, 1140 S. Coast Highway 101, Encinitas CA, 92024.

18 15. Reporting. During the life of this Consent Judgment, Veridiam shall provide CERF
19 electronic copies of publicly available documents it is required to submit pursuant to the 2015
20 General Permit within five (5) business days after such documents are submitted.

21 MUTUAL RELEASE OF CLAIMS

22 16. Provided that Veridiam has satisfactorily complied with the obligations set forth in
23 this Consent Judgment, CERF, acting on its own and in the public interest, shall not issue any
24 additional notices of intent to sue Veridiam, or its officers, directors, employees or lessors for
25 alleged violations of the General Permit or 2015 General Permit at the Veridiam Facilities
26 occurring or arising at any time before the Effective Date. CERF covenants not to sue, and hereby
27 releases all claims, including fees and costs, alleged against, or which could have been alleged
28 against, Veridiam, or its officers, directors, employees and lessors in association with the

1 allegations in CERF's Notice Letters and its complaint in this action. CERF shall not seek any
2 penalties, monetary or otherwise, nor encourage or provide assistance to any other party to seek
3 penalties, monetary or otherwise, in association with the allegations in CERF's Notice Letters and
4 complaint.

5 17. In consideration of the above, upon termination of this Consent Judgment, the
6 Parties hereby fully release, except for claims for Defendants' failure to comply with this Consent
7 Judgment and as expressly provided below, each other and their respective successors, assigns,
8 officers, agents, employees, landlords/property owners, and all persons, firms and corporations
9 having an interest in them, from any and all alleged Clean Water Act violations claimed in the
10 Complaint, up to and including the Effective Date of this Consent Judgment.

11 18. Nothing in this Consent Judgment limits or otherwise affects CERF's right to
12 address or take a position that it deems necessary or appropriate in any formal or informal
13 proceeding before the Regional Water Quality Control Board, the U.S. Environmental Protection
14 Agency, or any other judicial or administrative body on any other matter relating to Veridiam, to
15 the extent such action by CERF is not inconsistent with the terms and conditions of this Consent
16 Judgment.

17 DISPUTE RESOLUTION

18 19. This Court shall retain jurisdiction over this matter for the purposes of implementing
19 and enforcing the terms and conditions of this Consent Judgment and adjudicating all disputes
20 among the parties that may arise under the provisions of this Consent Judgment. The Court shall
21 have the power to enforce this Consent Judgment with all available legal and equitable remedies,
22 including contempt.

23 20. Meet and Confer. A party to this Consent Judgment shall invoke the dispute
24 resolution procedures of this Section by notifying all other Parties in writing of the matter(s) in
25 dispute and of the party's intention to resolve the dispute under this Section. The Parties shall then
26 meet and confer in an attempt to resolve the dispute informally over a period of fourteen (14)
27 calendar days from the date of the notice.

28 21. If the Parties cannot resolve a dispute by the end of the informal negotiations

1 described in Paragraph 20, above, a party may invoke formal mediation by sending the other party
2 a registered letter to that effect no more the five (5) business days after the fourteen (14) day meet
3 and confer period. The Parties shall mutually agree on a mediator and a mediation process within
4 fifteen (15) business days of invoking formal mediation pursuant to this Paragraph. The party
5 invoking mediation under this Paragraph shall be responsible for all of the mediator's costs.

6 22. If the Parties cannot resolve a dispute through the meet and confer process outlined
7 in Paragraph 20, or, if invoked, the formal mediation as described in Paragraph 21, above, a party
8 may seek judicial enforcement of the Consent Judgment by filing a motion before the United States
9 District Court for the Southern District of California. Prior to filing such a motion, written notice
10 must be given to the other party. The Parties shall jointly apply to the Court for an expedited
11 hearing schedule on the motion.

12 23. If a motion is brought pursuant to Paragraph 22, above, the prevailing party shall be
13 entitled to recover fees incurred to enforce the terms of this Consent Judgment consistent with the
14 provisions of Sections 505 and 309 of the Clean Water Act, 33 U.S.C. §1365 and § 1319.

15 **RETENTION OF JURISDICTION AND TERMINATION**

16 24. The Court shall retain jurisdiction over this matter for purposes of interpreting,
17 modifying or enforcing the terms of this Consent Judgment until the end of the 2016–2017 wet
18 season (May 30, 2017) unless either Party files and is granted a timely motion requesting an
19 extension of time for the Court to retain jurisdiction.

20 25. Unless such motion is granted, this Consent Judgment shall terminate on May 30,
21 2017.

22 **MISCELLANEOUS PROVISIONS**

23 26. Meet and Confer Process for Future Alleged Violations. For a period of five (5)
24 years starting on August 14, 2015, prior to issuing any new Notice of Intent to Sue or Notice of
25 Violation to Veridiam, or its officers, directors, and employees for any alleged violation of the
26 California Water Code or the Clean Water Act, CERF shall meet and confer with Veridiam
27 regarding any alleged violations. The parties will work in good faith to resolve any differences
28 prior to CERF bringing a new action.

1 27. Impossibility of Performance. No Party shall be considered to be in default
2 regarding its performance of any obligations under this Consent Judgment if performance becomes
3 impossible due to circumstances beyond the Party's control, or when failure to perform is
4 substantially due to circumstances beyond the Party's control, including without limitation any acts
5 or omissions of a third party non-signatory to this Consent Judgment (a "*force majeure*").
6 "Circumstances beyond the Party's control" shall not include normal inclement weather, economic
7 hardship, or inability to pay. Any Party seeking to rely upon this Paragraph to justify non-
8 performance shall have the burden of establishing that the Party could not reasonably have been
9 expected to avoid the failure of performance and could not through due diligence have overcome
10 the circumstances preventing performance.

11 28. Penalties for Failing to Adhere to Agreement Deadlines. Veridiam shall make a
12 remediation payment of one thousand dollars (\$1,000) for each missed deadline included in or
13 contemplated by this Consent Judgment, unless the missed deadline results from an impossibility
14 of performance, as described in the preceding Paragraph. Payments for missed deadlines shall be
15 made to CERF and shall be used for the restoration or improvement of the San Diego River
16 watershed. Veridiam agrees to make any such payments within thirty (30) days of a missed
17 deadline via certified mail or overnight delivery to Coastal Environmental Rights Foundation, 1140
18 South Coast Highway 101, Encinitas, CA 92024. Any failure by CERF to adhere to the deadlines
19 in this Consent Judgment shall be construed as CERF's acceptance of Veridiam's proper
20 performance of the obligation to which the missed deadline applies.

21 29. No Admissions. The Parties enter into this Consent Judgment for the purpose of
22 avoiding the time, expense, and uncertainty of litigation. Nothing in this Consent Judgment shall
23 be construed as an admission of any alleged fact, issue of law, or violation of law, nor shall
24 compliance with this Consent Judgment be construed as an admission of any alleged fact, issue of
25 law, or violation of law. However, this Paragraph shall not diminish or otherwise affect the
26 obligations of the Parties under this Consent Judgment.

27 30. Severability. If, subsequent to the entry of this Consent Judgment, any provision is
28 held by a court to be unenforceable, the validity of the remaining provisions shall not be adversely

1 affected.

2 31. Choice of Law. U.S. federal law shall govern this Consent Judgment.

3 32. Joint Statement Regarding Consent Judgment. To the extent either Party makes any
4 statement regarding this Consent Judgment, the Parties agree to release a joint statement.

5 33. Construction. The language in all parts of this Consent Judgment shall be construed
6 according to its plain and ordinary meaning, except as to those terms defined in the General Permit,
7 2015 General Permit, the Clean Water Act, or specifically herein.

8 34. Integration. All agreements and representations, express or implied, oral or written,
9 of the Parties concerning the subject matter of this Consent Judgment are contained herein.

10 35. Delivery of Documents. Any documents required by or provided for in this Consent
11 Judgment shall be sent by both email and first-class mail to each of the following representatives of
12 the Parties. Notice shall be deemed given and received on the date when documents are received
13 by email if such notice is given by email to all recipients between 9:00 a.m. and 5:00 p.m. Pacific
14 Time on a business weekday. Notice shall be deemed given and received on the next business
15 weekday if notice is given by email to all recipients on a holiday or weekend day or after 5:00 p.m.
16 Pacific Time on a business weekday.

17 Documents for CERF shall be sent to:

18 Sara Kent, Programs Director
19 Coastal Environmental Rights Foundation
20 1140 S. Coast Highway 101
Encinitas, CA 92024
sara@cerf.org

21 with a copy to:

22 Livia Borak
23 Coast Law Group LLP
24 1140 S. Coast Highway 101
Encinitas, CA 92024
livia@coastlawgroup.com

25 Documents for Veridiam shall be sent to:

26 Charles Passarelli
27 Chief Executive Officer
Veridiam, Inc.
28 1717 North Cuyamaca Street
El Cajon, CA 92020-1110

1 With a copy to:

2 Todd O. Maiden
3 Reed Smith LLP
4 101 Second Street, Suite. 1800
5 San Francisco, CA 94105
6 tmaiden@reedsmith.com

7 36. Execution in Counterparts. This Consent Judgment may be executed in one or more
8 counterparts, including facsimile and portable document format (PDF) electronic copies, each of
9 which shall be deemed to constitute an original copy of this Consent Judgment and all of which,
10 when taken together, shall be deemed to constitute one and the same Consent Judgment.

11 37. Modification. This Consent Judgment may be amended or modified only by written
12 instrument signed by all Parties or their successors in interest and approved by the Court.

13 38. Authorization. The undersigned are authorized to execute this Consent Judgment
14 and have read, understood, and agree to all of the terms and conditions contained herein.

15 39. The term "Effective Date," as used in this Consent Judgment, shall mean the date on
16 which the Court enters this Consent Judgment.

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1 IN WITNESS WHEREOF, the Parties have executed this Consent Judgment as of the last date set
2 forth below.

3 Date: October 12, 2015

Date: October 12, 2015

4 VERIDIAM, INC.

COASTAL ENVIRONMENTAL RIGHTS
5 FOUNDATION

6
7 By: 

Charles Passarelli
Chief Executive Officer

By: 

Sam Kent, Programs Director

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10 APPROVED AS TO FORM

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12 DATED: October 13, 2015

REED SMITH LLP

13
14 By: 

Todd O. Maiden
Phillip H. Babich
Attorneys for Defendant
Veridiam, Inc.

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16
17 DATED: October 12, 2015

COAST LAW GROUP LLP

18
19 By: 

Marco Gonzalez
Livia Borak
Attorneys for Plaintiff
Coastal Environmental
Rights Foundation

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22 IT IS SO ORDERED.

DATED:

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United States District Judge